IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 27560 of 2007(E)

CMP.7657/2007 of J.M.F.C.-I,KOTTARAKKARA

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PETITIONER:

CHANDRASEKHARAN NAIR,
CHITHRA PADINJATTINKARA,
KOTTARAKKARA, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO EXCISE DEPARTMENT, THIRUVANANTHAPURAM

2. THE ASSISTANT EXCISE COMMISSIONER
THIRUVANANTHAPURAM.

3. THE SUB INSPECTOR OF POLICE,
BALARAMAPURAM POLICE STATION,
THIRUVANANTHAPURAM.

4. THE SUB INSPECTOR OF POLICE
KOTTARAKKARA POLICE STATION.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.27560/2007

PETITIONER'S EXHIBITS:

EXT.P1:- TRUE COPY OF THE F.I.R.

EXT.P2:- TRUE PHOTOCOPY OF THE LETTER DATED 24/7/2007.

EXT.P3:- TRUE PHOTOCOPY OF THE LETTER DATED 6/8/2007.

EXT.P4:- TRUE PHOTOCOPY OF THE PETITION SUBMITTED BEFORE THE 2ND RESPONDENT.

EXT.P5:- TRUE PHOTOCOPY OF THE PETITION DATED 17/8/2007.

EXT.P6:- TRUE PHOTOCOPY OF THE SAID ORDER OF THE LEARNED MAGISTRATE DISMISSED CMP no.7657/2007 on 22/8/2007.

[TRUE COPY]

R.BASANT, J.

W.P.C.No.27560 of 2007

Dated this the 19th day of October 2007

J U D G M E N T

The petitioner has come to this court with a prayer that there may be a direction to release the vehicle belonging to him which is seized by the police. The petitioner claims to be the owner of the said car. According to him, his car was thieved. Crime No.950/2006 of Kottarakkara police station was registered under Section 379 I.P.C. Investigation in that crime was in progress. Police could not trace the said car. In the meantime, the Balaramapuram police seized the said vehicle as a vehicle used for commission of an offence under Section 55 of the Kerala Abkari Act. The vehicle was produced before the learned Magistrate at Balaramapuram. The Kottarakkara police came to know of the seizure of the vehicle. As requested by them, the vehicle was produced before the learned Magistrate at Kottarakkara. Proceedings under Section 67B of the Kerala Abkari Act is also in progress. The petitioner, in these circumstances, has come to this court with a prayer that directions may be issued for the release of the vehicle to the petitioner.

2. The learned Government pleader was requested to ascertain the facts and take a definite stand. The learned Government Pleader submits that the State is convinced that the petitioner's car was thieved and that the same has been used for commission of the

offence under the Kerala Abkari Act without his knowledge and involvement. In these circumstances, the learned Government Pleader submits that the State has no objection in the vehicle being released to the petitioner herein on appropriate conditions. The petitioner had approached the learned Judicial First Class Magistrate Court-I, Kottarakkara with the same request. But the prayer was turned down by Ext.P6 order.

3. In the absence of opposition from the learned Public Prosecutor, no further detailed reference to facts or discussion is necessary.

4. This petition is accordingly allowed. It is directed that the vehicle in question shall be released under the following terms and conditions:

i) The petitioner shall produce all documents before the learned Magistrate to satisfy the learned Magistrate that the petitioner is the owner and he is entitled to the possession of the same.

ii) The petitioner shall execute a bond for an amount equal to the value of the vehicle, as fixed by the learned Magistrate, in his discretion along with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall, in the bond, undertake to produce the vehicle before the learned Magistrate or any other court or authority as directed by the learned Magistrate and also before the authorised officer under Section 67B of the Kerala Abkari Act, as and when directed.

iv) The petitioner shall in the bond undertake to produce the vehicle in the same condition in which it is handed over to him.

v) On execution of the bond the learned Magistrate shall issue necessary directions for release to the person in whose possession the vehicle now is and the same shall be forthwith released to the petitioner by such person.

5. The learned Government Pleader presses that a bank guarantee may be insisted from the petitioner. I find the same to be unnecessary in the peculiar facts and circumstances of this case where it is not disputed that the petitioner had no contumacious or culpable responsibility for the offence committed under the Kerala Abkari Act.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007